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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,104	11/04/2003	Gregory B. Altshuler	105090-0129	6794
21125 7590 12/21/2007 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			EXAMINER JOHNSON III, HENRY M	
			ART UNIT 3739	PAPER NUMBER
			NOTIFICATION DATE 12/21/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@nutter.com

Office Action Summary

Application No.

10/702,104

Applicant(s)

ALTSHULER ET AL.

Examiner

Henry M. Johnson, III

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10-17,19,20,22,23 and 56-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 15 and 73 is/are allowed.
- 6) ☐ Claim(s) 1,2,4-8,10-14,16,17,19,20,22 and 56-72 is/are rejected.
- 7) ☐ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

Response to Arguments

Applicant's arguments filed October 31, 2007 have been fully considered and are persuasive with regard to Lerner et al. in view of Altshuler et al. and all such rejections are withdrawn. The examiner does believe that Lerner et al. provides useful teachings with regard to the use of multiple delivery conduits and fluence levels, however new rejections using Altshuler et al. as the primary reference are provide herein.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-8, 11-14, 16, 19, 20, 56, 61-63, 65, 68-70 and 72 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,273,884 to Altshuler et al. Altshuler et al. teach an apparatus for dermatology treatment using CW radiation (abstract). The apparatus

uses a cylindrical lens with a laser diode light bar (one dimensional array) mounted in the handpiece (Col. 15, lines 11-16). The cylindrical lens has a bulge (not flat) surface which meets the dictionary definition of a protuberance or projection. The device is disclosed as applying pressure during use (Col. 6, lines 8-11). The cylindrical lens may be treated to normally have total internal reflection, however, when the lens is in contact with the patient's skin, the total internal reflection at the skin-contacting surface is broken due to the change of index of refraction at this surface so that light energy is emitted from the lens into the patient's skin. Altshuler et al. teach the use of total internal reflection lens is a safety feature which assures that radiation is not applied to a patient or other person unless the handpiece is in contact with a patient's skin (Col. 16, lines 19-32). The power is disclosed as from 5-150 W/cm with a beam width of 5mm (Col. 12, lines 28-32). This yields a fluence of $10\text{W}/\text{cm}^2$ at the 5 watt level. Altshuler et al. further teach a kinematic motion sensor that rolls on the surface of the skin and provides a signal to the source controller (Col. 15, lines 20-25). Clearly the wheel must make contact to provide the signal and is therefore interpreted as a detector of contact.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 22, 57-60, 64 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,273,884 to Altshuler et al. as applied to claims 1, 8, 63 and 70 above and further in view of German Patent G 91 02 407.2 to Mink. Altshuler et al. are discussed above, but do not teach an applicator in the form of a brush. Mink discloses a hairbrush for delivery of optical radiation via light guides, each guide having a laser diode as its source (Fig. 1, # 20). The multiple diodes are an array. A cooling radiator (Fig. 2, # 24) acts as a heat sink for the radiation sources. The light conductors are interpreted as bristles of a brush and are capable of providing a compressive force during use. It would have been obvious to one skilled in the art to use multiple delivery conduits in the form of bristles as taught by Mink in the apparatus of Altshuler et al. to provide a larger area of treatment to shorten the time of treatment and discomfort to a patient.

Regarding claims 59 and 60, laser diodes are well known in the art to be available in a wide range of wavelengths and intensities. It would have been obvious to one skilled in the art to select one or more wavelengths and/or intensities as appropriate for the desired treatment.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,273,884 to Altshuler et al. in view of German Patent G 91 02 407.2 to Mink. Both are discussed above. It would have been obvious to one skilled in the art to use multiple delivery conduits in the form of bristles as taught by Mink in the apparatus of Altshuler et al. to provide a larger area of treatment to shorten the time of treatment and discomfort to a patient.

Claims 12, 66 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,273,884 to Altshuler et al. Altshuler et al. are discussed above, but do not specifically disclose source wavelengths. Laser diodes are well known in the art to be available in a wide range of wavelengths and intensities. It would have been obvious to one skilled in the art to select one or more wavelengths and/or intensities as appropriate for the desired treatment.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,273,884 to Altshuler et al. in view of U.S. Patent 5,445,608 to Chen et al. Altshuler et al. are discussed above, but do not teach a means for delivery of a treatment medicament. Chen et al. teach a device that provides for the delivery of an agent to the treatment site concurrent with radiation (Fig. 16A). It would have been obvious to one skilled in the art to use the agent delivery as taught by Chen in the invention of Altshuler et al. as the use photosensitizers are well known to a skilled artisan as would be the various methodologies for delivery of a photosensitizer; i.e. systemic, direct, etc.

Allowable Subject Matter

Claims 15 and 73 are allowed.

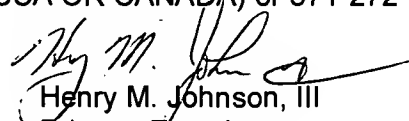
Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Henry M. Johnson, III
Primary Examiner
Art Unit 3739